K & C Supply, Inc. *and* Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 20 a/w the International Brotherhood of Teamsters, AFL–CIO. Case 8–CA–31369

December 7, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Upon a charge and an amended charge filed by the Union on February 25 and May 25, 2000, respectively, the General Counsel of the National Labor Relations Board issued a complaint on May 31, 2000, against K & C Supply, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 13, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On October 18, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 11, 2000, notified the Respondent that unless an answer were received by September 25, 2000, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation, with an office and place of business in Toledo, Ohio, has been engaged in the non-retail sale of plumbing supplies. During the 12-month period preceding the issuance of the complaint, the Respondent sold and shipped from its Toledo, Ohio facility, goods valued in excess of $50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All utility workers in the warehouse of the Employer, but excluding office employees, outside salespersons, janitorial and maintenance employees, management employees and supervisors.

Since about June 1, 1998, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 1, 1998, to May 31, 2000.

At all times since June 1, 1998, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since on or about February 23, 2000, the Union, by letter, requested that the Respondent bargain collectively over the effects of the Respondent's closing of its Toledo facility, and since that time, the Respondent has failed and refused to do so.

This subject relates to the wages, hours, and other terms and conditions of employment in the unit and is a mandatory subject for the purposes of collective bargaining.

Since about February 23, 2000, the Union, by letter, has requested that the Respondent furnish it with the following information: The names and addresses, dates of hire, and date of last employment for all bargaining unit employees from January 1, 1998, to the present.

The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about February 23, 2000, the Respondent has failed and refused to furnish the Union with the requested information.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce

within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to bargain with the Union, we shall order the Respondent, on request, to bargain with the Union about the effects of its decision to close its Toledo facility. As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close its facility, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;[1] (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

Further, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, K & C Supply, Inc., Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit set forth below, by failing and refusing to bargain about the effects of its decision to close its Toledo, Ohio facility:

> All utility workers in the warehouse of the Employer, but excluding office employees, outside salespersons, janitorial and maintenance employees, management employees and supervisors.

(b) Failing and refusing to provide to the Union the following information necessary for and relevant to bargaining, which the Union requested on about February 23, 2000: the names and addresses, dates of hire, and date of last employment for all bargaining unit employees from January 1, 1998, to the present.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects on unit employees of the closure of its Toledo facility and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay the former unit employees their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on

[1] *Melody Toyota*, 325 NLRB 846 (1998).

its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed as set forth in the remedy portion of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Provide the Union in a timely fashion the information it requested by latter dated February 23, 2000.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[2] to the Union and to the last known address of all former unit employees.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certificate of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 7, 2000

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to mail and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following unit, by failing and refusing to bargain about the effects of our decision to close our Toledo, Ohio facility:

> All utility workers in the warehouse of the Employer, but excluding office employees, outside salespersons, janitorial and maintenance employees, management employees and supervisors.

WE WILL NOT fail and refuse to provide to the Union the following information necessary for and relevant to bargaining which the Union requested on about February 23, 2000: the names and addresses, dates of hire, and date of last employment for all bargaining unit employees from January 1, 1998, to the present.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on unit employees of the termination of our business at our Toledo, Ohio facility, reducing to writing any agreement reached, and pay limited backpay to the unit employees.

WE WILL provide to the Union in a timely fashion the following information it requested on about February 23, 2000: the names and addresses, dates of hire, and date of last employment for all bargaining unit employees from January 1, 1998, to the present.

K & C SUPPLY, INC.